

The Court Jesters

When I recall the reactions of my friends and family to the announcement that I was going to law school, it seems that before the congratulations and obligatory inquiries regarding what school I was to attend, why I had decided to become a lawyer, and whether I would be coming back to practice in my home town, the first response always seemed to begin "Did you hear the one about the lawyer who . . . ?" After the fifth or sixth time of being informed of how one could tell a lawyer was lying,¹ I began to get the feeling that most people didn't place much stock in lawyers, and I wondered why.²

Eventually it occurred to me that public lampooning of the legal profession is the average citizen's way of dealing with something he finds overly complex, often frustrating, and at the same time indispensable. The public expects the law to be simple and straightforward; blind to class, color, and wealth; swift, merciful, and above all "just."³ Lawyers, however, know that the law cannot at all, or even at most times, be all these things.

The problem from the perspective of the citizen is that there is usually some silly law or ridiculous legal concept, such as ignorance of the law being no excuse, contributory negligence, or the hearsay rule, that prevents him from getting all he wants or doing all he wishes to do. Moreover, there is always some "damned lawyer" out there who is willing to tell him about it. If not his own attorney, then it's the "hired gun" of his opponent.

The truth is, in many ways we are a "priesthood." The ordinary citizen is expected only to obey the law, not comprehend it.⁴ Attorneys are not only expected to know and comprehend the law, they are expected to be skilled in using it to their client's advantage.⁵ Law being the amorphous thing that it is, the unenviable task of explaining to the citizen what his

1. On the off-handed chance that this Article should ever fall into the hands of the uninitiated, the traditional punch line is "His lips are moving."

2. In retrospect, it seems odd that this intrigued me, being an ex-cop, you would think I would know why people don't seem to like lawyers.

3. Which means he should get the house, the kids, the car, alimony, and child support, while the spouse should be sentenced to a life of sleeping on steamvent grates and eating holiday meals at the local rescue mission.

4. Notwithstanding that ignorance of the law is no excuse.

5. Notwithstanding that ignorance of the law is no excuse not to practice it.

elected representatives have done to him falls naturally to the lawyer. Thus, it is the lawyer who becomes the physical manifestation of that figure of the Almighty, Omnipotent and Eternal—"The System." By experiencing the real and immediate impact of the law on his life, through contact with lawyers, the average citizen comes to know what it is like to become entangled in that "seamless web" that is the law.⁶

Without conducting empirical research, one might conclude that all such experiences are bad, thus justifying the ever-abundant crop of lawyer jokes.⁷ Usually however, an experience with the law, even if pleasant for the aggrieved citizen, is seldom a complete victory.⁸ Such is to be expected. All law exists as a compromise. But, there is something in the nature of man that causes him to court the maiden of Justice with one eye over her shoulder, winking at her older and uglier sister, Revenge.⁹ Such a suitor, however, is quickly frustrated at how elusive the truth becomes, and what an unfaithful mistress Justice seems to be. (And who among us has ever thought that our adversary ever had a point worth considering or a position more worthy of courting than ours?¹⁰)

This is a frustration not unknown to lawyers themselves. It is, I believe, a frustration that is the precursor of all parody of the legal profession, both inside of it and out. This frustration results from the coming to grips with the idea that no matter how "just" your argument seems to you, you can't always get what you want.¹¹ It seems, therefore, that lawyer jokes serve less as an attack on the legal profession or the law itself, than as something of a collective sigh of accepting resignation. A sigh heaved not out of grudging exasperation, but out of maturing realization. A realization that despite its shortcomings, maybe—just maybe—there is more "justice" in the law of reason than the law of the jungle.

Though many lawyers find such humor less than comical,¹² sometimes, I think, we doth protest too much. Every day in the most respected legal journals the public is tried in absentia for its misdemeanor caricatures of the profession. Yet, many unindicted co-conspirators within our own ranks remain at large: felons, practiced and skilled in the high art of

6. Lawyers of course, get stuck in it all the time.

7. On the contrary, at least one citizen seems to have had a pleasant "encounter," how else are we to account for the bumper sticker that proudly proclaims "My lawyer can beat Your Lawyer!"

8. Which means he gets only the house, the kids, the car, alimony, and child support.

9. Not to be labeled sexist, I would note that women are perhaps at least as vengeful as men, but you will understand the inherent difficulties of creating a gender neutral metaphor describing justice in anthropomorphic terms.

10. This is not a bar review question.

11. Cf. Jagger & Richards, ("I can't get no satisfaction").

12. It must be noted that not all attorneys are offended by lawyer jokes. Many find them humorous; some even see them as simple truths.

satire.

Humor helps the practitioner deal with the law no less than it does the layman, though in different ways. All of the old-timers knew the importance of making light of themselves and the profession, lest they fall victim to the consequences of taking themselves too seriously. Around the turn of the century it was a regular and important function of the Georgia Bar Association for the President to appoint some sage and wizened attorney to deliver a speech or a paper at the annual convention relating the most witty and humorous anecdotes he had acquired in his many years of practice in the various courts of the realm. Humor was serious business within the bar. Humor was a necessary element in balancing the life of both the profession and the individual practitioner.

As Walter Gregory noted:

Many people think there is no fun about the law. That depends upon what they mean. There is no fun about transgressing law of any kind—Natural, moral or statutory. But those who violate the law are the only ones who need fear it. We who practice it, may enjoy it.¹³

Commenting on the importance of humor in the daily life of the practitioner, Roland Ellis observed that:

Many otherwise sad moments may be freckled with droll reflections as some woodland pool with sunshine, as one returns checks for increased retainers voluntarily intruded by over-appreciative clients, or receives intelligence from the referee in bankruptcy that others have had the considerate memory to schedule the value of two years of your service among their other excellent liabilities.¹⁴

Most often in the form of "war stories," humor served as a method of introduction and education in the mores and practice of the profession. These stories provided admonitions on how one should approach the practice of law, and functioned as a form of professional self-analysis. They bound members of the bar together when the necessities of the profession required dealing with each other as enemies. They functioned as warnings that particularly in those situations in which justice literally hangs in the balance we must never take ourselves or our notions of justice too seriously if we are to retain our sanity and serve those whose causes we champion. Today, they serve as reminders that on those occasions when we have done just that, humor brings relief from the sting of

13. Gregory, *The Funny Side of the Law*, 5 GA. B.A. REP. 148 (1888). Bear in mind that old Walter made this statement 100 years before the Supreme Court upheld the constitutionality of fee forfeiture.

14. Ellis, *Interesting and Humorous Experiences at the Bar*, 33 GA. B.A. REP. 178, 182 (1916).

defeat, and the promise of victory on the horizon.

In spite of protest that the profession was overcrowded, newcomers were welcomed, and offered the advice of the veteran's youthful folly in hopes that the new lawyer could avoid the same mistakes. At the same time, the veteran was admonished to treat the newcomer kindly and remember his own early days at the bar. In discussing the relations between the newcomer and the veteran, one speaker noted that in the then current (1888) state of the profession

. . . the veterans treat the recruits with uniform kindness. Very few of them in our day would do like the old grey-beard, who replied to the two-hour speech of the young lawyer, by saying: "Gentlemen of the jury, I shall follow the example of my young friend, and submit this case to you *without argument*."¹⁵

Another recalled the advice regularly given by Judge J. W. H. Underwood to young lawyers fresh from passing the bar exam as he swore them in as new members of the bar:

Don't be alarmed at the wise looking justice. He don't know a thing. He's a deadbeat on knowledge. Stand to the rack fodder or no fodder, and you will see daylight after a while. The community generally supposes that you will be rascals. There is no absolute necessity that you should be. You may be smart without being tricky . . . You are dismissed with the sincere hope of the court that you will escape a calamity that befalls many lawyers, and not make asses of yourselves.¹⁶

Then just as now, an attorney was admired for his ability to keep his wits about him in the courtroom. Especially valued were stories of courtroom battles won, seemingly, because of nothing more than an attorney's ability to turn his opponents own argument against him in a particularly clever manner. Many of the stories illustrate the value of this skill. Though the veracity of some of the stories may be open to question,¹⁷ there is no doubt an attorney especially adept at redirecting an opponent's attack was sure to become the subject of legend. Charles Bass recounted such a tale involving Judge Underwood.

On one occasion, Judge Underwood had a case before a Justice of the Peace, who was no exception to the general rule in regard to amount of learning. He was opposed by his brother, who, in his argument, found occasion to display his superior knowledge to the Court and gaping crowd by frequently quoting Latin maxims. Judge Underwood had the

15. *Id.* at 152.

16. Henley, *The Practice of Law in the Georgia Mountains*, 32 GA. B.A. REP. 180, 185 (1915).

17. After all, they were told to a room full of lawyers, not a one of whom was under oath.

conclusion, and in the course of his speech, said: "May it please your honor, my brother had used much Latin in his speech, and you did not know what it means, neither does this crowd, here assembled. I feel, though he is my brother, it is my duty to tell you what it means. In English, it is nothing more or less than this, 'That the Court is a damned fool and rascal.'" It was with difficulty that the judicial anger of the Court was appeased, and it is needless to say Judge Underwood gained his case.¹⁸

Closely linked to the skill of redirecting an opponent's argument, and equally valued, was the ability to attack and discredit an opponent by causing him to become flustered and thereby lose his composure, while yourself remaining calm. If you could respond to such an opponent's uncontrolled outburst in a witty manner, so much the better.¹⁹ The events related by Irwin MacIntyre and C. J. Thornton illustrate the devastating effects such an attack can have on one's opponent:

A young associate of mine was recently suing a railroad for a "Fine, registered, pedigreed, thoroughbred Duroc Jersey sow." A distinguished member of this Association was representing the railroad, and had in succeeded in bringing out that the sow sometimes ate chickens.

He had been making much of this point, and would refer to the subject matter of the suit, as: "That old red chicken-eating sow." Every time such language was used, my young friend representing the plaintiff would flinch like he was stuck with a knife.

Finally the champion of the deceased sow arose to address the jury, and began in these words: Gentlemen of the Jury, don't you pay any attention to what my distinguished opponent says about "An old chicken-eating sow, an old chicken-eating sow!" Why! gentlemen of the jury, the moral character of that sow hasn't got a God's thing to do with this case.²⁰

In the superior court of one of the counties of the state, a well-known counselor, in summing up a case, was so severe on the opposing lawyer that the latter jumped up and exclaimed, "I would like to know if the learned counselor thinks I am a fool." His opponent reflected a moment, then quietly said, "My friend wants to know if I think he is a fool." In response to that interrogatory, I can only say that I am not prepared to deny it.²¹

18. Bass, *Wit and Humor of the Bar of the Georgia Mountains*, 15 GA. B.A. REP. 187, 188 (1898).

19. This practice seems to be the legal manifestation of the ages old adage "If you can't dazzle them with brilliance, then baffle them with . . ."—well you know the rest.

20. MacIntyre, *Interesting and Humorous Experiences at the Bar*, 32 GA. B.A. REP. 197, 200 (1916).

21. Thornton, *Wit and Humor of the Georgia Bar*, 14 GA. B.A. REP. 302, 310 (1897).

Humor was used for more than depicting those traits thought admirable in a member of the bar. It also provided illustrations of how the lawyer ought not to act, lest the fate predicted by Judge Underwood should befall him. While it is easy to agree with Judge's basic admonition not to make an "ass" out of one's self, as H. F. Lawson noted, it is not one that is easy to comply with:

It seems as though a bail trover process being served upon the client, [a young attorney] advised that the client suffer himself to be locked up rather than surrender the property. The client was not pleased with the alternatives offered him, and to get some satisfaction out of the situation, began to upbraid his counsel for giving such idiotic advice,—to give up the property or go to jail, Being young, of impetuous temperament, and stung by the words of his client, he told him that to prove that he was perfectly sincere and honest in his advice, that if the client did not want to surrender the property, that he would go to jail and would stay there with him until the case was disposed of and to jail the two went, and being in jail the lawyer and client stayed for several days. Being in need of something one night, there were not able to raise the jailer. They found upon inquiry the next morning that he locked them in at night, left them, while he went to his home some five miles away. The jail was of wood; the time was winter; warmth was derived from of decrepit stove, and the lawyer began to think of the horrors of being confined at night in this fire-trap. Therefore, drawing upon all the logic and eloquence that he could muster., he persuaded his client that the only thing for him to do, and in fact the thing he should have done in the beginning, was to surrender the property to the sheriff.

This time the client took his lawyer's advice, and immediately upon being discharged, went forthwith and hired another attorney.²²

The legal system and its growing, sometimes seemingly useless, complexity was often then, as now, a favorite target of lawyers frustrated with the ever changing nature of law and its practice. Just as we romanticize the past and make light of the supposed advances of our day, lawyers at the turn of the century did the same.

Before the turn of the century was the age of the circuit rider. Few towns had their own court house, much less their own judge. So the legal business of the county had to await the arrival of the circuit riders. The judge, with little or no formal legal education, equipped with nothing more than his "code and form book," meandered from town to town, holding court whenever he could find a good shady spot large enough to seat the jury. Justice may not have been swift then, but it was simple. Expressing a longing for the "good ol' days" of the circuit riders, a speaker at the 1909 convention noted that:

22. Lawson, *The Circuit Rider in the Wiregrass*, 31 GA. B.A. REP. 242, 248 (1914).

The Professional man did not make as much money then as he does now, and he did not need much. The poor lawyer of today pays more in tax than the rich one did before the War The up-to-date lawyer, with his stenographer and typewriter, keeps copies of all his papers, and he considers many things indispensable which the old-timer had little use for, or which he could at least do without and suffer no great inconvenience therefrom. In my youthful days we had no friction matches, but we did not smoke as many cigarettes nor burn as many houses as we do now.²³

Even in 1888, it was noted that:

Our American reported cases are coming in at a rate of 16,000 a year, and text books in proportion. You may find decisions to sustain any side of any proposition. The books are getting full of discordant and inharmonious law. No wonder people say, there is no telling what a jury or a woman will do.²⁴

And as early as 1911 Joel Branham complained:

A law book concern advertises three miles of law books, and also five thousand shelf fillers, at twenty-five cents a volume. We have law books before us, behind us, above us, below us. Books, books, everywhere and hardly time to think The making of law books has become a commercial business. They exceed the length of the longest purses and require extra help and space for storage. They are so numerous and conflicting that they are becoming unavailable. We should have a bon-fire.²⁵

Imagine, riding from one dusty south Georgia town to the next. In each, the air of the carnival prevails, with people coming from all the adjoining counties to witness the trials. As you and your colleagues arrive, the street is lined with potential clients, some engaged in fisticuffs to determine which will get to hire the services of the best among you. There is barely time to strike an agreement for your fee before you find yourself standing beneath some towering Georgia pine, or broad and brooding oak, children hanging from the boughs like so many vultures, each vying to get a better look as you rise to face the jury and make your case. In such an arena you

23. Grice, *Recollections of the Supreme Court of Georgia*, 26 GA. B.A. REP. 132, 137 (1909).

24. Gregory, *supra* note 13, at 152.

25. Branham, *Brevity and Reform*, 28 GA. B.A. REP. 51, 51-52 (1911). By this point you have noticed a proliferation of useless footnotes, and annotations. For the uninitiated, an explanation is in order. This is a law review article, and such fastidious and meticulous footing has nothing to do with defective potty training of the writer during childhood, as has been speculated by many. Rather, it is tradition. Being a tradition, it must be adhered to in all but the most exceptional of circumstances. Repetition alone however, does not a tradition make. Only if a sufficient amount of time passes between the stupidity of the original act and its ultimate absurdity can something properly be called a tradition.

win or lose based on the sheer power of oratory, argument, and persuasion. It is not unlike the courtroom of today.

The life of today's lawyer, however, is not so easily romanticized with our computers,²⁶ fax machines,²⁷ and cellular telephones so our clients can find us anywhere at any time, and answering machines so we can hide from them. In truth, his role has changed but little, and the role of humor in the life of the profession and the practitioner is no less important. It helps both the lawyer and the layman deal with the complexity, ambiguity, and inconsistency in the law. It provides a method for dealing with the realization that true justice is never simple, sure, nor swift. And though we often find ourselves offended at being the object of so much mockery, as Judge Underwood *might* have said, "It's hell to be the butt of so many jokes, but it's better than being just a butt." Moreover, humor in the life of the lawyer is often simply a matter of necessity, which perhaps accounts for why we are the grandest of the court jesters. As Roland Ellis pointed out:

The life of a lawyer is of all lives the most human. A philosopher must needs be he, who lives it truly. If I were Raphaello Santi, and would perpetuate with my wondrous brush the great figure, yielded to eternity by the race of men, upon the consecrated canvas would loom no general with sword reeked with conquest; no priest with lash or largesse, as he threatened or cajoled; no prince of industry, with a world's marts puissant and compelling grasp; no silk-robed chancellor, making and unmaking laws and lives of subject peoples. On the grave expanse, no high lights glow—no painted pomp appears. There is the sanded floor of a country court-house; the stolid half-understanding jurors of divers miens; the complaisant justice; the scowling mob that crowds the creaking benches, and packs doors and windows. In the foul-aired pit cowers a shape, once human, unkempt, friendless, desolate. Standing by this creature's side, with hand uplifted rears the spare figure of a man in speech. His face spells pain—utter, ages old. His thin frame is clad with rusty black that shines with wear. His shallow cheeks start out with twin hectic spots of red. His pale eyes glint like new steel. His lips curl—fearless—defiant. It is the picture of a God-like weakling demand-

26. So you can locate 4000 irrelevant cases dealing with the particular legal issue you are researching, all within a matter of seconds.

27. So a case decided 2000 miles away on the morning of your first trial, that directly overrules the argument you spent six months building by carefully analyzing the 4000 cases you found on the computer, can be used against you in a hearing that afternoon, in full text.

ing man's justice for God's poorest creature. It is a picture of courage. It is a scene of true greatness. It is a Georgia lawyer, himself without friends abroad, and food at home, defending his brother miserable.

Laughter or tears! Cui Bono?²⁸

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28. Ellis, *Interesting and Humorous Experiences at the Bar*, 33 GA. B.A. REP. 178, 184 (1916).

